

### III. Remarks

Claims 1-14 and 16-38 were previously pending. For clarification purposes, claims 23-38 that were previously withdrawn from consideration in the Applicants' response to the restriction requirement filed April 24, 2007, are cancelled by the present paper without prejudice to or disclaimer of the subject matter therein. Further, claims 1-14 and 16-hydrogel are also canceled by the present paper without prejudice to or disclaimer of the subject matter therein. Accordingly, all of the previously pending claims have been canceled.

The Office Action mailed May 15, 2008 rejected claims [1-4, 17, and 18 under 35 U.S.C. §102(b) as being anticipated by US Patent No. 4,265,231 to Scheller et al. ("Scheller"). Additionally, the Office Action rejected claims 5-11 and 19-21 under 35 U.S.C. §103(a) as being unpatentable over Scheller. Finally, the Office Action rejected claims 12-14] under 35 U.S.C. §103(a) as being unpatentable over Scheller in view U.S. Patent No. 5,340,129 to Wright. These rejections are moot and will not be addressed at this time in light of the claims being cancelled by the present paper without prejudice to or disclaimer of the subject matter therein. Claims 39-58 are newly added and are patentable over the cited references for at least the following reasons.

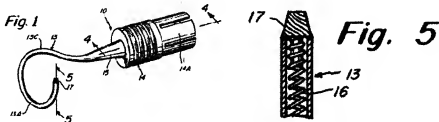
New independent claim 39 appears to be patentable over the cited references because it recites one or more elements that are not disclosed or suggested in the cited references. For example, new independent claim 39 requires:

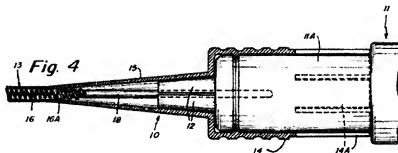
39. (New) A surgical instrument for the dissection of bone or other tissue having a motor with a power output, the surgical instrument comprising:
  - a dissection tool having an elongated shaft, a proximal end, and a distal end;
  - a coupling assembly for coupling the power output to the proximal end of the dissection tool, the coupling assembly extending along a longitudinal axis; and
  - an attachment tube having a proximal portion movably coupled to the coupling assembly and an internal passage extending from the proximal portion to an opposite distal portion, the proximal portion of the internal passage extending substantially along the longitudinal axis and the distal portion of the internal

passage extending at an oblique angle with respect to the longitudinal axis;

wherein the attachment tube is movable along the longitudinal axis between a first coupled position and a second coupled position with respect to the coupling assembly such that the distal end of the dissection tool extends beyond the distal portion of the attachment tube a first distance in the first coupled position and the distal end of the dissection tool extends beyond the distal portion of the attachment tube a second distance in the second coupled position, wherein the second distance is greater than the first distance.

Specifically, with respect to independent claim 39, Scheller at least fails to disclose “wherein the attachment tube is movable along the longitudinal axis between a first coupled position and a second coupled position with respect to the coupling assembly such that the distal end of the dissection tool extends beyond the distal portion of the attachment tube a first distance in the first coupled position and the distal end of the dissection tool extends beyond the distal portion of the attachment tube a second distance in the second coupled position, wherein the second distance is greater than the first distance.” First, Scheller does not disclose that cannula 13 is movable along a longitudinal axis. Furthermore, as shown below in FIGS. 1, 4, and 5, Scheller discloses that burr 17 is anchored to spring 16 and that spring 16 is soldered to rod 18 to resiliently oppose movement of burr 17 away from the distal end of cannula 13. Scheller, col. 3, ll. 25-30. Therefore, Scheller teaches that burr 17 extends a fixed distance beyond cannula 13. Thus, for at least these reasons Scheller necessarily fails to disclose the above-recited limitations.





Thus, claim 39 appears to be patentable over the cited references. Claims 40-47 should be allowable as well since they depend from and further limit claim 39. Accordingly, Applicants respectfully request that the Examiner allow claims 39-47.

New independent claim 48 appears to be patentable over the cited references because it recites one or more elements that are not disclosed or suggested in the cited references. For example, new independent claim 48 requires:

48. (New) A surgical instrument for the dissection of bone or other tissue having a motor with a power output, the surgical instrument comprising:
- a dissection tool having an elongated shaft, a coupling area adjacent a proximal portion, and a dissecting area adjacent a distal portion;
  - a coupling assembly for fixedly coupling the power output to the coupling area of the dissection tool, the coupling assembly extending along a longitudinal axis;
  - an attachment tube movably coupled to the coupling assembly, the attachment tube receiving and supporting at least a portion of the elongated shaft, a proximal portion of the attachment tube extending substantially along the longitudinal axis and a distal portion of the tube extending along an axis extending at an oblique angle with respect to the longitudinal axis, a curved transition portion connecting the proximal portion to the distal portion; wherein the attachment tube is movable along the longitudinal axis with respect to the coupling assembly between a first coupled position and a second coupled position;
  - wherein in the first coupled position the elongated shaft of the dissection tool includes a bend corresponding to the curved transition portion of the attachment tube at a first distance from the

dissecting area; and

wherein in the second coupled position the elongated shaft of the dissection tool includes a bend corresponding to the curved transition portion of the attachment tube at a second distance from the dissecting area, the second distance being less than the first distance.

Specifically, with respect to independent claim 48, Scheller at least fails to disclose “wherein the attachment tube is movable along the longitudinal axis between a first coupled position and a second coupled position with respect to the coupling assembly; wherein in the first coupled position the elongated shaft of the dissection tool includes a bend corresponding to the curved transition portion of the attachment tube at a first distance from the dissecting area; and wherein in the second coupled position the elongated shaft of the dissection tool includes a bend corresponding to the curved transition portion of the attachment tube at a second distance from the dissecting area, the second distance being less than the first distance.” In that regard, and as discussed above with respect to claim 39, Scheller does not disclose that cannula 13 is movable along a longitudinal axis. Therefore, Scheller necessarily fails to disclose the above-recited limitations, which require movement of a bend in the dissection tool based on movement of the attachment tube along the longitudinal axis.

Thus, for at least these reasons claim 48 appears to be patentable over the cited references. Claims 49-55 should be allowable as well since they depend from and further limit claim 48. Accordingly, Applicants respectfully request that the Examiner allow claims 48-55.

New independent claim 56 appears to be patentable over the cited references because it recites one or more elements that are not disclosed or suggested in the cited references. For example, new independent claim 56 requires:

56. (New) A surgical instrument for the dissection of bone or other tissue having a motor with a power output, the surgical instrument comprising:

a dissection tool having an elongated shaft, a coupling area adjacent a proximal end, and a dissecting area adjacent a distal end;

a coupling assembly for fixedly coupling the power output to the coupling area of the dissection tool, the coupling assembly

extending along a longitudinal axis; and

an attachment tube movably coupled to the coupling assembly, the attachment tube receiving and supporting at least a portion of the elongated shaft, a proximal portion of the tube extending substantially along the longitudinal axis and a distal portion of the tube extending along an axis extending at an oblique angle with respect to the longitudinal axis, a curved transition portion connecting the proximal portion to the distal portion;

wherein the attachment tube is movable along the longitudinal axis between a first coupled position and a second coupled position with respect to the coupling assembly;

wherein the distal end of the dissection tool extends beyond the distal portion of the attachment tube a first distance in the first coupled position and the distal end of the dissection tool extends beyond the distal portion of the attachment tube a second distance in the second coupled position, wherein the second distance is less than the first distance.

wherein in the first coupled position the elongated shaft of the dissection tool includes a bend corresponding to the curved transition portion of the attachment tube at a third distance from the dissecting area; and

wherein in the second coupled position the elongated shaft of the dissection tool includes a bend corresponding to the curved transition portion of the attachment tube at a fourth distance from the dissecting area, the fourth distance being less than the third distance.

Claim 56 recites limitations similar to those discussed above with reference to claims 39 and 48. Accordingly, Applicants submit that new claim 56 and its dependents 57 and 58 are also patentable over the cited references.

#### IV. Conclusion

It is believed that all matters set forth in the Office action have been addressed and that all of the pending claims are in condition for allowance. A notice of allowance for the pending claims is respectfully requested. If the Examiner believes a telephone conversation would be useful for advancing prosecution of this application, the Examiner is invited to telephone the undersigned at the number below. Deposit Account Number 08-1394 can be used for any over payments or under payments.

Respectfully submitted,



Gregory P. Webb  
Registration No. 59,859

Dated: 8-15-08  
HAYNES AND BOONE, LLP  
901 Main Street, Suite 3100  
Dallas, Texas 75202-3789  
Telephone: 972-739-8641  
IP Facsimile No. 214-200-0853

I hereby certify that this correspondence is being filed with the United States Patent and Trademark Office via EFS-Web on the following date.

Date: AUGUST 15, 2008  
Randi Ross-Quick  
RANDI ROSS-QUICK